



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2004

Sheriff Larry Lynch
McLennan County Sheriff's Office
219 North 6th
Waco, Texas 76701

OR2004-10049

Dear Sheriff Lynch:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 213726.

The McLennan County Sheriff's Office received a request for offense report number 97-6507. You inform us that you will release some of the requested information. You claim that the remaining information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.108 excepts from public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You assert that the release of the submitted information would interfere with an open investigation. We note, however, that the submitted information refers to the case as being "carried inactive." We also note that the information relates to an alleged aggravated robbery during the night of October 7-8, 1997. You inform us that this information was requested on September 14, 2004 – almost seven years later. You do not inform us, and the submitted information does not itself reflect, that the information relates to a case in which a

prosecution was pending when you received this request for information. We note that the statute of limitations for aggravated robbery is five years from the date of the commission of the offense. *See* Crim. Proc. Code arts. 12.01(4)(A) (felony indictment for robbery must be presented no later than five years from date of commission of offense), 12.03(d) (any offense that bears title “aggravated” carries same limitation period as primary crime). It thus appears that the alleged offense to which the submitted information relates is no longer subject to prosecution. Therefore, having considered your arguments and reviewed the submitted information, we find that you have not demonstrated that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Consequently, we conclude that you may not withhold any of the submitted information under section 552.108.

We note, however, that section 552.130 is applicable to some of the submitted information. This section excepts from public disclosure information that relates to “a motor vehicle title or registration issued by an agency of this state[.]”¹ Gov’t Code § 552.130(a)(2). Information that relates to a Texas motor vehicle title, vehicle registration, or vehicle identification number must be withheld from the public under section 552.130.² We also note, however, that section 552.130 protects privacy interests. In this instance, the requestor may have an ownership interest in the motor vehicle to which the submitted vehicle information pertains. In that event, the requestor would have a special right of access to the motor vehicle information under section 552.023.³ If the requestor has a right of access to the vehicle information under section 552.023, then it may not be withheld from him under section 552.130.⁴ If the requestor does not have a right of access to the motor vehicle information, then you must withhold that information under section 552.130.⁵

¹Unlike other exceptions to public disclosure, this office will raise section 552.130 on behalf of a governmental body, as it is a mandatory exception and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001).

²We note that some of the submitted motor vehicle information is illegible. Consequently, we have marked the types of vehicle information that you must withhold from the public under section 552.130.

³*See* Gov’t Code § 552.023(a) (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests).

⁴*See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

⁵We note that a governmental body may require a requestor to provide additional identifying information sufficient to enable the governmental body to determine whether the requestor is eligible to receive motor vehicle record information under chapter 730 of the Transportation Code. *See* Gov’t Code § 552.222(c).

In summary: (1) you must withhold the motor vehicle information under section 552.130, unless the requestor has a right of access to the information under section 552.023; and (2) the rest of the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

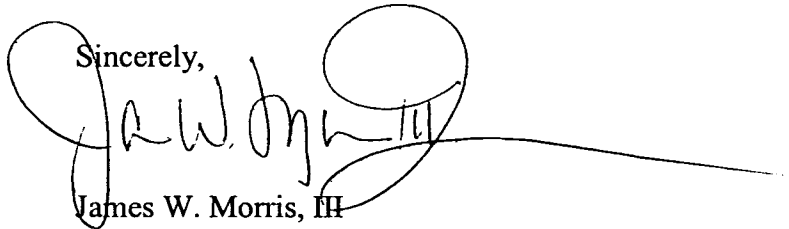
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 213726

Enc: Submitted documents

c: Mr. Jeffrey Todd Popp
18320 Gholson Road
Waco, Texas 76705
(w/o enclosures)